No. 71-883

In the Supreme Court of the United States

OCTOBER TERM, 1971

CEDALLE H. PEARL, PETITIONER

v.

MELVIN R. LAIRD, SECRETARY OF DEFENSE,
FRANCIS SARGENT, GOVERNOR OF MASSACHUSETTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT LAIRD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, a citizen of Massachusetts, brought this action to enjoin the United States' involvement in the hostilities in Vietnam, as unconstitutional and in violation of the United Nations Charter. The district court dismissed the complaint and the court of appeals summarily affirmed.

The question of the legality of American participation in Vietnam was before this Court recently on the motion by the Commonwealth of Massachusetts

for leave to file a complaint in *Massachusetts* v. *Laird*, No. 42 Original, October Term 1970, motion denied, 400 U.S. 886. For the reasons stated in our brief in opposition in that case (No. 42 Original, at pp. 17-42), we submit that the issue, including whether the United States is in violation of the United Nations Charter, is not susceptible of judicial determination or effective judicial relief and presents a nonjusticiable political question. See *Baker* v. *Carr*, 369 U.S. 186; *Powell* v. *McCormack*, 395 U.S. 486; *Georgia* v. *Stanton*, 6 Wall. 50; *Luther* v. *Borden*, 7 How. 1. This Court recently declined to review on certiorari a similar challenge brought by a serviceman. See *Orlando* v. *Laird*, 443 F. 2d 1039 (C.A. 2), certiorari denied, 404 U.S. 869.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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